Leg. Serv. J. Jenkins.

To the

HONORABLE

Societies of GRAY's-*Inne*, and of the rest of the Innes of Court, and to all the Professors of the LAW.

David Jen

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I Have now spent forty five yeares in the Study of the Lawes of this Land being my profession, under and by the conduct of which Lawes this commonwealth hath flourished for some ages past in greate splendor and happinesse (jam seges est ubi Troja fuit) *The great and full body of this Kingdome hath of late yeares fallen into an extream sicknesse, it is truly said that the cause of the disease being known, the disease is easily cured. There is none of you I hope, but doth heartily wish the recovery of our common parent, our native country* (Moribus antiquis stat res Brittannica) *I call God to witnes that this discourse of mine hath no other end then my wishes of the common good: How farr I have been from Ambition, my life past, and your own knowledge of me, can abundantly informe you, and many of you well know, that I ever detested the Shippe-mony, and Monopolies, and that in the beginning of this Parliament, for opposing the excesses of one of the Bishoppes, I lay under three Excommunications and the Examination of seeventy seven Articles in the high Commission Court. His sacred Majestie: (God is my witnesse) made me a Judge in the parts of Wales against my will, and all the meanes I was able to make; and*

a patent for my place was ſent me for the which I have not paid one farthing, and the place is of ſo inconſiderable a benefit that it is worth but 80. l. per annum *when paid, and it coſt me every yeare I ſerved twice as much out of mine own eſtate in the way of an ordinary and frugall expence. That which gave me comfort was that I knew well that his Majeſtie was a juſt and a prudent Prince.*

In the time of the Attournyſhipps of Maſter Noye and the Lord Banks, they were pleaſed to make often uſe of me, & many referrences concerning ſuits at Court upon that occaſion came to my knowledg, & as I ſhall anſwer to God upon my laſt accompt this is a truth, that all or moſt of the references which I have ſeen in that kind (& I have ſeen many) were to this effect, That his majeſty would be informed by his Counſell if the ſuits preferred were agreable to the Lawes, and not inconvenient to his people, before he would paſſe them. (what could a juſt and pious Prince do more ?) Gentlemen: you ſhall finde the Cauſe and the Curſe of the preſent great diſtemper in this diſcourſe, and God proſper it in your hands, thoughts, and words, as the Caſe deſerves.

Hold to the Lawes, this great body recovers: forſake them, it will certainly periſh. I have reſolved to tender my ſelfe a Sacrifice for them as Cheereſully, and I hope (by Gods aſſiſtance) as conſtantly as old Eleazer did for the holy Lawes of his Nation.

Your well-wiſher

DAVID JENKINS.

Now Priſoner in the Tower.

Lex

Lex Terræ.

THE Law of this Land hath three grounds. Firſt *Cuſtome*. Secondly *Judiciall Records*. Thirdly *Acts* of *Parliament*. The two latter are but declarations of the *Common-Lawe* and *Cuſtome* of the Realme, touching *Royall-Government*. And this Law of *Royall-Government*, is a *Law-Fundamentall*.

The Government of this Kingdome by a *Royall Soveraign*, hath beene as ancient as Hiſtory is, or the memoriall of any time; what power this *Soveraignty* alwaies had and uſed in Warre and Peace in this Land, is the ſcope of this diſcourſe; That *Uſage* ſo practiſed makes therein a *Fundamentall Lawe*, and the *Common-Lawe* of the Land is common *Uſage*, *Plowdens Commentaries*. 195.

The kings prerogative is a principall part of the common Lawe. *Com. Littl.* 344.

For the firſt of our kings ſithence the Norman Conqueſt, the firſt *William*, ſecond *William*, *Henry* the firſt, *Stephen*, *Henry* the ſecond and *Richard* the firſt, the Cuſtomes of the Realme, touching *Royall Government*, were never queſtioned: The ſaid Kings enjoyed them in a full meaſure. In king *Johns* time the Nobles and Commons of the Realm conceiving that the ancient Cuſtomes and Rights were violated, and thereuppon preſſing the ſaid King to allowe them in the ſeventeenth of King *John*, the ſaid Liberties were by King *John* allowed, and by his ſonne *Henry* the thyrd, after in the ninth yeere of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foreſta*, declared foure hundred twenty two yeeres ſithhence by the ſaid Charters.

Now reſts to be conſidered, after the Subjects had obtained their Rights and Liberties, which were no other

then their ancient Customes (and the fundamentall Rights of the King as *Soveraigne* are no other.) How the Rights of *Soveraignty* continued in practise from *Henry* the thirds time untill this present Parliament of the third of November 1640. for before *Henry* the thirds time, the *Soveraignty* had a very full Power.

Hen. 3. Bracton temps H-3. lib. 4. cap. 24. Sect. 1.

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea quæ sunt jurisdictionis & Pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat; This proves where the supreme power is.

A Delinquent is hee who adheres to the Kings Enemies *Com. Sur. Littl.* 261. This shewes who are Delinquents.

Sect. 5. Bract. ibid.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo. This shewes where the supreme power is.

Bracton lib. 5. tract. 3. de defaltis Cap. 3. Bracton. Lib. 3. Cap. 7.

Rex non habet superiorem nisi Deum, satis habet ad pœnam quod Deum expectat ultorem. This shewes where the supreme power is.

Treasons, Fellonies, and other Pleas of the Crowne, are *propriæ causæ Regis.* This shewes the same power.

By these passages it doth appeare what the Custome was for the power of *Soveraignty* before that time; the power of the Militia, of coyning of Money, of making Leagues with forreigne Princes, the power of Pardoning, of making of Officers, &c. All Kings had them, the said Powers huveno beginning.

Edw. 1.

Sexto Ed. 1. Com. sur. Littl. 85. Liege Homage, every Subject owes to the King (*viz*) Faith *de Membro, de vita, de terreno Honore*, the forme of the Oath *inter vetera statuta* is set downe; We reade of no such, or any Homage made to the two Houses, but frequently of such made by them.

7. Ed. 1. statuts at large fol 42.

It is declared by the Prelates, Earles, Barrons and Commonalty of the Realme, that it belongeth to the King and his Royall Segniory, straitly to defend force of Armour and all

all other force againſt the Kings peace, at all times when it ſhall pleaſe him, and to puniſh them that ſhall doe contrary, according to the Lawe and Uſage of the Realme, and hereunto they are bound to ayde their Soveraigne Lord, at all ſeaſons when neede ſhall be. Here the ſupreame power in the time of Parliament, by both Houſes, is declared to belong to the King.

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in London, Weſtminſter, or the Suburbs. This condemnes the multitudes coming to Weſtminſter, and the Guards of armed men. *7 Ed. 2. 4 pars inſtit. 14.*

All who held by Knights. ſervice, and had twenty pounds *per annum*, were diſtraynable *ad Arma militaria ſuſcipienda*, This agrees with the Records of ancient time, continued conſtantly in all Kings times, but at this Parliament 3. November 1640. The King, out of his Grace, diſcharged this duty, which proves that the power of warre and preparation thereto, belongs not to the two houſes, but only to the King. *1 Ed 2. de Militibus.*

The two *Spencers* in *Ed.* 2. time, hatched (to cover their Treaſon) this damnable and damned opinion (*viz.*) That Ligeance was more by reaſon of the Kings politique capacity then of his perſon, upon which they inferred theſe execrable and deteſtable conſequences. Firſt, if the King demeaned not himſelfe by reaſon in the right of his Crowne, his Lieges are bound by Oath to remove him. Secondly, ſeeing the King could not be removed by ſuite of Lawe, it was to be done by force. Thirdly, that his Lieges be bound to governe in default of him. *Ed. 3. Calvins* Caſe *Cook l. 7. fol. 11*

All which tenets were condemned by two Parliaments, the one called *exilium Hugenis* in *Ed.* 2. time; the other by 1. *Ed.* 3. *cap.* 2. All which Articles againſt the *Spencers* are confirmed by this laſt Statute, the Articles are extant in the booke called *vetera Statuta*. The ſeparation of the Kings perſon from his power, is the principall Article condemned, and yet all theſe three damnable, deteſtable, and execrable

crable conſequents, are the grounds whereupon this preſent time relies, and the principles whereupon the two Houſes found their Cauſe.

Plowdon Com. 322. 27. *aſſ. pl.* 49. The Villeine of a Lord, in the preſence of the King, cannot be ſeized, for the preſence of the King is a protection for that time to him: This ſhewes what reverence the Lawe gives to the perſon of a King.

33 *Ed.* 3. *ayde de Roy.* 103. *Fitz.* *Reges, ſacro oleo uncti ſunt capaces ſpiritualis juriſdictionis.* But the two Houſes were never held capable of that power.

10 H. 7. 16. *Rex eſt perſona mixta cum ſacerdote, habet Eccleſiaſticam & ſpititualem juriſdictionem.* This ſhewes the Kings power in Eccleſiaſticall Cauſes.

Com. Sur. Littl. Sect. 4. The Lands of the King are called in Law, *patrimonium ſacrum.* The Houſes ſhould not have medled with that ſacred Patrimony.

3 *Ed.* 3. 19. The King hath no Peere in his Land, and cannot be judged: *ergo* The two Houſes are not above him.

The Parliament of 15. *Ed.* 3. was repealed, for that it was againſt the Kings Lawes and Prerogative. 4. *pars. inſtit. fol.* 52. This ſhewes cleerely the Propoſitions ſent to Newcaſtle, ought not to have beene preſented to his Majeſty, for that they are contrary to the Lawes and his Prerogative.

4 *pars Cookes inſtit. fol.* 14. 42 E 3. Parliament Roll: num: 7: *Lex & conſuetudo Parliamenti.* The Lords and Commons cannot aſſent in Parliament to any thing that tends to the diſinheriſon of the King and his Crowne, to which they are ſworne. This condemnes the ſaid Propoſitions likewiſe.

25 *Ed.* 3. *cap.* 2 To depoſe the King, to impriſon him untill he aſſent to certaine demands, A warre to alter the Religion eſtabliſhed by Lawe, or any other Lawe, or to remove Councellors, to hold a Caſtle or Fort againſt the King; are offences againſt that Lawe declared to be Treaſon by the reſolutions herein after mentioned, by that Law men are bound to ayd the King when warre is levied againſt him in his Realme. King, in this Statute muſt be intended in his naturall body and

and perſon that only can die; for to compaſſe his death, and declare it by overt Act is declared thereby Treaſon, To incounter in fight ſuch as come to ayde the King in his warres, is Treaſon.

Compaſſing of the Queenes death, of the Kings eldeſt ſonne, to coyne his money, to counterfet his Great-Seale, to levie warre againſt him, to adhere to ſuch as ſhall ſo do, are declared by that Act to be high Treaſon. This Statute cannot referre to the King in his politique capacitie, but to his naturall, which is inſeparable from the politique, for a body politique can have neither wife nor childe, nor levy warre, nor doe any act but by the operation of the naturall body: A Corporation or body politique hath no ſoule or life, but is a fiction of the Lawe, and the Statute meant not fictitious perſons, but the body naturall, conjoyned with the publique, which are inſeparable. 21 Ed. 4 14.

The clauſe in that Act, that no man ſhould ſue for grace or pardon for any offence condemned, or forfeiture given by that Act, was repealed by a ſubſ quent Act in 21. *R.*2, holden unreaſonable, without example and againſt the Law and cuſtome of the Parliament. This condemnes the propoſition for diſabling the King to Pardon. 4. *pars inſtit. fol.* 42. The Act of 11. *R.*2. ſo much urged by the other ſide, was an Act to the which the King conſented, and ſo a perfect Act: yet Note the Army then about the Town: Note that that Law is againſt private perſons, and by the 3. *cap.* thereof, the Treaſons there declared, are declared to be new Treaſons made by that Act, and not to be drawne to example, it was abrogated 21. *R.*2. and revived by an uſurper 1. *H.*4. to pleaſe the people, and by the tenth chap. thereof enacts that nothing ſhall bee Treaſon but what is declared by 25. *Ed.*3, *R. 2. 11 anno cap.* 13 4 *pars inſtit. fol.* 42 16 *R:*2: *cap:* 5.

The Regality of the Crowne of England is immediatly ſubject to God and to none other. Plaine words, ſhewing where the ſupreme power is. *H.* 4

The Commiſſion of Array is in force and no other Commiſſion

miſſion *Rot. Parlm.* 5. *H.*4. *numb.*24. an Act not printed, this Act was repealed by 4 & 5. *P. & M. cap.*2. this repealed by the Act of 1. *Jacobi* and ſo it is of force at this day, for the repealing Statute is repealed, 4. *pars inſtitu. fol.*51. & 125. publiſhed ſithence this Parliament, by the deſire of the houſe of Commons, their Order is printed in the laſt leafe of the Commentaries upon *Magna Charta.*

A booke alowed by Syr *Nat Brent*, called the reaſon of the war: *fol* 95

Syr *Edward Cooke*, by their party is holden for the Oracle of the Law, who wrote the ſaid fourth part, in a calme and quiet time, and I may ſay, when there was no neede to defend the authority of the Commiſſion of Array.

For that objection, That that Commiſſion leaves power to the Commiſſioners to taxe men *ſecundum facultates*, and ſo make all mens eſtates Arbitrary : the anſwere is That in levying of publique aydes upon mens goods and eſtates, which are variable, and probably cannot be certainly knowne by any but the owners, it is impoſſible to avoide diſcretion in the aſſeſſments, for ſo it ever was, and ever will be. By this appeares that the votes of the two houſes againſt the Commiſſion of Array, were againſt the Law.

H. 5:

The death of the King diſſolves the Parliament, if Kings ſhould refer to the politique capacity it would continue after his death, 4. *pars Inſt.* 46. which proves that the King connot be ſaid to be there when he is abſent, as now he is : there is no *interregnum* in the kingdome the diſſolution of the Parliament by his death ſhewes that the beginning and end thereof refers to the naturall perſon of the King and therefore he may lawfully refuſe the Propoſitions

2 *H.*5. 4 *pars inſtit.* 46

2. *H.* 5. *Chap.*6. to the King onely it belongs to make Leagues with forreigne Princes ; This ſhewes where the ſupreame power is.

*H.*6.

8. *H.* 6. *numb.* 57. *Rott. Parl. Cookes* 4. *pars inſtit.* 25. No priviledg of Parliamenr. is grantable for Treaſon Felony or Breach of the peace ; if not to any one member, nnot to two, not to ten, not to the Major part, 19. *H.* 6.62. The law is the inherritanc of the King and his peo-

King

ple by which they are ruled, King and people; And the people are by the law bound to ayde the king, And the King hath an inheritance to hold Parliaments and in the ayds granted by the Comonalty. If the major part of a Parliament commit Traſon they muſt not bee Judges of it, for no man or body, can be Judge in his own cauſe, and aſwell as ten or any number may commit treaſon, the greater number may aſwell.

The King by his letters pattents may conſtitute a County palatine and grant Regall rights, this ſhewes where the ſupreme power is. 32. H. 6. 13. Plowd. 334.

17. *Ed.* 4. *rot. parl. numb.* 39. No priviledge of Parliament is grantable for Treaſon, Fellony or Breach of the peace, if not for one, not for two or more, or a major part. *Ed.* 4.

The ſame perſons muſt not be Judge and party. A corporat body can commit no treaſon, nor can treaſon be committed againſt a corporate body, 21. E. 4, 13. and 14. but the perſons of the men who make that body may commmit treaſon, and commit it againſt the naturall perſon of him who to ſome purpoſes is a body corporate, but *quatenus corporate* no treaſon can be committed by or againſt ſuch a body; that body hath no ſoul, no life, and ſubſiſts only by the fiction of the Law, and for that reaſon the Law doth conclude as aforeſaid; therefore the ſtature of 25. E. 3, muſt be intended of the Kings naturall perſon conjoyned with the politique which are inſeparable and the Kings naturall perſon being at Holmby, his politique is there alſo, and not at Weſtminſter; for the politique and naturall make one body indiviſible *calvins* Caſe 7 *pars. fol.* 11, 12. *Plow. com.* 213.

If all the people of England ſhould breake the league made with a forreigne Prince, without the Kings conſent, the league holds and is not brokcn; and therefore the repreſentative body is inferior to his Majeſties. 19 *Ed.* 4. 6.

The King may erect a Court of Common pleas in what part of the kingdome he pleaſeth by his letters pattents; can the two howſes do the like? 22 *Ed.* 4. *Fitz. juriſdiction laſt placite.*

Ed.5. 1. *Ed.* 5. *fol.* 8. It cannot be ſaid that the King doth
4 *Ed.*4.25. wrong, declared by all the Judges and *Serjents* at law
5 *Ed.*4 29. then there.

The reaſon is, nothing can be done in this Commonwealth by the Kings grant or any other act of his, as to the ſubjects perſons, goods, lands or liberties, but muſt be according to eſtabliſhed lawes, which the Judges are ſworne to obſerve and deliver between the King and his people impartially to rich and poore, high and low; and therefore the Juſtices and the Miniſters of Juſtice are to be quſtioned and puniſhed if the Lawes be violated: And no reflection to be made on the King. All Counſellers and Judges for a yeare and three months nntill the tumults began this Parliament were all left to the ordinary courſe of Juſtice, what hath beene done ſithence is notorious.

*R.*3. For great Cauſes and conſiderations an act of Parlia-
1 *R.* 3 *cap.*15. ment was made for the ſurety of the ſaid Kings perſon; if a Parliament were ſo tender of King *Rich.* the 3. the howſes have greater reaſon to care for the preſervation of his Majeſtie.

*H.*7; The Subjects are bound by their allegiance to ſerve the
11 *H.*7. *cap.*1. King for the time being againſt every Rebellion, power and might, reared againſt him within this land, that it is againſt all lawes, reaſon and good conſcience, if the King ſhould happen to be vanquiſhed, that for the ſaid deede and true duty and alligeance they ſhould ſuffer in any thing, it is ordeined they ſhould not: and all acts of proceſſe of law heereafter to be made to the contrary are to be void, This law is to be underſtood of the naturall perſon of the King, for his politique capaſity cannot be vanquiſhed; nor war reared againſt it.

Relapſers are to have no benefit of this Act.

12 *H.*7.20. It is no ſtatute, if the King aſſent not to it, and he may
*H.*8. diſaſſent, this proves the negative voice.
24 *H.*8. *cap.*12. The King hath full power in all cauſes to doe juſtice to
25 *H.*8. *cap.*21 all men this is affirmed of the King, and not of the two Houſes.

The

The commons in Parliament acknowledg no ſuperior to the King under God, the houſe of Commons confeſſe the king to be above the repreſentative body of the Realme.

Of good right and equity the whole and ſole power of pardoning treaſons, felonies &c. belong to the King, as alſo to make all Juſtices of Oyer and Terminer, Judges, Juſtices of the peace &c. This law condemns the practiſe of both houſes at this time. 27 H.8.cap 24. Note.

The Kings royall aſſent to any act of Parliament ſigned with his hand expreſſed in his letters Patents under the great Seale, and declared to the Lords and Commons ſhall be as effectuall as if hee aſſented in his owne perſon; a vaine act if the King be virtually in the houſes. 33.H.8 cap.21

The King is the head of the Parliament, the Lords the principall members of the body, the Commons the inferior members, and ſo the body is compoſed, therefore there is no more Parliament without a King, then there is a body without a head. Dier 38.H.8.fo 59.60.

There is a corporation by the Common law, as the King, Lords, and Commons, are a a corporation in Parliament, and therefore they are no body with out the King. 14 H. 8. fol.3.

The death of the King diſchargeth all mainpriſe to appeare in any Court or to keepe the peace. 24 Ed.3:48. 1 Ed.4.2.

The death of the King diſcontinues all pleas by the common law which agreeth not with the virtuall power inſiſted upon now. 2 H.4.8. 1 H.7.10. 1 Ed.5.1.

Writs are diſcontinued by the death of the King; Patents of Judges, Commiſſion for Juſtice of the peace. Sheriffs Eſcheators, determined by his death; where is the virtuall power? 1 Ed.6. 1 Ed.6.cap.7.

All authority and juriſdictions ſpirituall and temporall is derived from the King; therefore none from the houſes. 1 Ed.6. cap.2.

His Majeſties ſubjects, according to their bounden duties, ought to ſerve the King in his warres, of this ſide or beyond the ſeas; beyond the ſeas is to be underſtood for wages; This proves the power of warres and prepara- 2.3 Ed.6.cap.2 11 H.7. cap.1. Calvins Caſe. Sa.pars Cooke.

tion for warre to be in the King.

5.6 Ed.cap.11. It is moſt neceſſary both for common policy and duty of the Subjects, to reſtraine all manner of ſhamefull ſlaunders againſt their King, which when they be heard, cannot but be odible to his true and loving Subjects, upon whom dependeth the whole unity and univerſall weale of the realm. This condemnes their continuing of the weekly pamphlets who have beene ſo foule mouthed againſt his Majeſty.

Q. Mary. The puniſhment of all offenders againſt the Lawes, belongs to the King, and all juriſdictions doe, and of right
1 Mar.Pl.1.6.2 ought to belong to the King. This leaves all to his Majeſty.

4.5 P.&M.c.3 All Commiſſions to levy men for the warre, are awar-
Q. Eliz. ded by the King. The power of warre only belongs to the
10 Eliz.Pl.315 King.

It belongs to the King to defend his people, and to provide Armes and force. No ſpeech of the two houſes.

Roy ad ſole government de ſes ſubjects. Corps naturall le
Plow.234.242 *Roy & politique ſont un corps*, that is, The King hath the
213. Calvins ſole government of his Subjects, the body politique and
Caſe 7. pars the naturall body of the King make one body, and not di-
fol.12. vers, and are inſeparable and indiviſible.
Plow.com.213.

The body naturall and politique make one body, and are
Plow.934.243 not to be ſevered: Ligeance is due to the naturall body,
213. Calvins and is due by nature; Gods Law, and mans law, cannot
Caſe 7 pars fo. be forfeited nor renounced by any meanes, it is inſeparable
12. from the perſon.

1 Eliz. cap. 1. Every Member of the Houſe of Commons, at every Par-
5 Eliz. cap.1. liament, takes a corporall Oath, That the King is the ſu-
Cawdries Caſe preme and only Governour, in all Cauſes, in all his Domi-
5 pars fol.1. nions, otherwiſe he is no member of that Houſe; the words of the Law are, In all Cauſes, over all perſons.

The ſaid Act of 1. *Eliz.* is but declarative of the ancient Lawe, *Cawdries* Caſe *ibid.*

43 Eliz. The Earle of Eſſex, and others, aſſembled multitudes of
3 pars inſtit.fo. men to remove Councellors, adjudged Treaſon by all the
12. Judges of England.

To

To depose the King or take him by force, to impriſon him untill he hath yeelded to certain demands, adjudged Treaſon, and adjudged accordingly in the Lord *Cobhams* Caſe. 39 *Eliz. Hil.* 1 *Jacobi ibid.*

Ariſing to alter Religion eſtabliſhed, or any Lawe, is Treaſon; ſo for taking of the Kings Caſtles, Forts, Ports or ſhipping. *Brooke* treaſon 24. 3. & 4. *Philip* and *Mary*, *Dyer*, *Staffords* Caſe concerning Scarborough. 39 *Eli. Bradſ.* Caſe *fol.* 9 & 10. 3 *Inſtit.* By all the Judges of England, *ibid.*

The Lawe makes not the ſervant greater then the Maſter, nor the ſubject greater then the King, for that were to ſubvert Order and Meaſure. 10 *Eliz. Plow:* 316,

The Lawe is not knowne but by Uſage, and Uſage proves the Law, and how Uſage hath beene is notoriouſly knowne 10 *Eliz: Plow.* 319.

The King is our only Rightfull and Lawfull Liege Lord and Soveraigne, Wee doe upon the knees of our hearts agnize conſtant Faith, Loyalty and Obedience to the King and his Royall progeny, in this high Court of Parliament, where all the body of the Realme is eyther in perſon or by repreſentation: We doe acknowledge that the true and ſincere Religion of the Church, is continued and eſtabliſhed by the King, And do recognize, as we are bound by the Law of God and Man, the Realm of England and Imperiall Crowne thereof doth belong to him by inhærent byrthright, and lawfull and undoubted ſucceſſion, and ſubmit our ſelves and our poſterities for ever, untill the laſt drop of our blood be ſpent, to his rule; and beſeech the King to accept the ſame as the firſt fruits of our Loyalty and Faith to his Majeſty and his Poſterity for ever, and for that this Act is not compleate nor perfect without his Majeſties aſſent, the ſame is humbly deſired. This proves that the Houſes are not above the King; that Kings have not their titles to the Crowne by the two Houſes, but by inhærent byrth-right, and that there can be no Statute without his expreſſe aſſent, and deſtroyes the chymera of the Kings virtuall being in the Houſes. K. *James* 1 *Jaco. cap.* 1: 9 *Ed:* 4. *fol.* 8.

3 *Jac. cap.* 4: 23 *Eliz. cap.* 1. To promiſe obedience to the Pope, or any other State, Prince or Potentate, other then the King his Heires and Succeſſors, is Treaſon; And therfore thoſe perſons who call the Houſes the Eſtates offend this Lawe.

K. Charles Collection of Ordinances *fo.* 727. 1 *pgrs. ibid. fol.* 728. Such Bills as his Majeſty is bound in Conſcience and Juſtice to paſſe, are no Lawe without his aſſent.

To deſigne the ruine of the kings perſon, or of Monarchy is a monſtrous and injurious charge.

ibid. fol. 865. *Ubi Lex non diſtinguit, non eſt diſtinguendum,* all the aforeſaid Acts and Lawes doe evidently prove the Militia to belong to the King: that the King is not virtually in the two houſes: that the King is not conſiderable ſeparately in relation to his politique capacity: that the King is not a perſon truſted with a power, but that it is his inherent byrth-right, from God, nature and lawe, and that he hath not his power from the people: Theſe Lawes have none of thoſe diſtinctions of naturall and politique, *abſtractum & concretum,* power and perſon, in *Cæſars* time this Iſland had Kings, and ever ſince, which is almoſt 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdome by the people: A Parliament never made King, for they were Kings before, the Parliaments are ſummoned by the Kings Writts, which for Knights Citizens and Burgeſſes begins thus, *viz.*

Rex vic. Wilts. Saltem. Quia Nos de aviſamento & aſſenſu Conſilij nri. pro quibuſd. arduis & urgentibus negotiis nos ſtatum & defenſionem Regni nri. Angl. & Eccleſiæ Anglicanæ concernentibus quoddam Parliamentum nrum. apud B. teneri ordinavimus & ibid. cum Prælatis magnatibus & proceribus dicti Regni nri. Colloquium habere & tractatum, ipſi vicecomiti preæipimus firmiter injungendo quod facta Proclamatione in proximo Comitatu tuo poſt receptionem ejuſd. brevis, duos Milites gladiis cinctos, &c. eligi facias ad faciendum & conſentiendum hiis quæ tunc ibidem de Communi Concilio nro. Angliæ faventi Deo contigerit ordinari ſuper nego-

negotiis antedictis ita quod pro defectu poteſtatis hujuſmodi ſeu propter improvidam electionem Militum, Civium, & Burgenſium pred. dicta negotia nra. infecta non remanerent.

The King is *Principium, Caput & finis Parliamenti,* the body makes not the head, nor that which is *poſterior* that which is *prior* : *Concilium non eſt Preceptum*, *Conciliarij non ſunt Præceptores*, for Councell to compell a conſent, hath not beene heard of to this time in any age, and the houſe of Commons, by the Writt, are not called ad *Concilium*; the Writts to the twelve Judges, Kings Councell, twelve Maſters of the Chancery are *Concilium impenſuri*, and ſo of the Peeres. The Writts for the Cominalty, *Ad faciendum & conſentiendum.* Which ſhewes what power the repreſentative body hath, they have not power to give an oath, neither doe they claime it. 4 *pars inſtit. fol.* 3 & 4.

The King at all times, when there is no Parliament, & in Parliament is aſſiſted with the advice of the Judges of the Lawe, twelve in number, for England at leaſt hath two Sergeants when feweſt : an Attorney and Sollicitor, twelve Maſters of the Chancery, his Councell of State, conſiſting of ſome great Prelates and other great Perſonages, verſed in State affaires, when they are feweſt to the number of twelve. All theſe perſons are alwaies of great ſubſtance, which is not preſerved but by the keeping of the Lawe, The Prelates verſed in divine Lawe, the other Grandees in affaires of State and managery of Government, The Judges, Kings Sergeants, Attorney, Sollicitor, and Maſters of the Chancery verſed in the Lawe and Cuſtomes of the Realme : All ſworne to ſerve the King and his people juſtly and truly, the King is alſo ſworne to obſerve the Lawes, and the Judges have in their Oath a clauſe, That they ſhall doe common right to all the Kings people, according to the eſtabliſhed Lawes, notwithſtanding any command of the King to the contrary, under the Great Seale or otherwiſe, The people are ſafe by the Lawes in force The Oath of the Juſtices 18. of *Ed.* 3. among Statutes of that yeere.

force without any new: The Lawe finding the King of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Graunts in his Minoritie, (there are many great persons living hold many a thousand ponnd a yeere by Patents from *Edward* the sixth, passed when hee was but ten yeeres of age) not to bee bound to any Lawe to his prejudice, whereby he doth not binde himselfe, power of warre and peace, coyning of Money, making all Officers, &c. The Lawe, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all kings have enjoyed them till 3. *Nov.* 1640.

It will bee said notwithstanding all this fence about the Lawes, the Lawes have beene violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answere to this is evident: There is no time past, nor time present, nor will there bee time to come, so long as men mannage the Lawe, but the Lawes will bee broken more or lesse, as appeares by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. *Jan.* 1641, being then driven away by Tumults. And the Houses for a yeere and almost three Moneths: From 3. *Nov.* 1640. to 10 *Jan.* 1641. as aforesaid, being a yeere and almost three moneths, had time and liberty to question all those persons who were eyther causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, What hath beene done this way? Both Houses in *Henry* the eights time tendred

dred to him a Bill to bee paſſed called commonly the Bill of the ſix Articles, this was conceived by them to bee a juſt and a neceſſary Bill: had not *Henry* the eighth done well to have refuſed the paſſing of this bill? both houſes tendred a bill to him to take the reading of the Scriptures from moſt of the laity: had not King *Henry* the eight deſerved much prayſe to reject this bill? In Queene *Maryes* time both houſes exhibited a bill to her to introduce the Popes power and the Roman religion; had not Queeene *Mary* don well to have refuſed this bill? Many ſuch inſtances may be given. The two Houſes now at Weſtminſtar I am ſure will not deny but the refuſall of ſuch bills had beene juſt, the King being aſſiſted as aforeſaid, and why not ſo in theſe times?

For the Civill Govrnment what a Bill did both houſes preſent to *Richard* the third to make good his title to the Crowne; had it not beene great honour to him to have rejected it? what bills were exhibited to *Henry* the eighth by both houſes for baſtardizing of his daughter *Elizabeth*, a Queene of renowned memory, to ſettle the Crowne of this Relme for default of iſſue of his body upon ſuch perſons as he ſhould declare by his letters Patents or his laſt will, and many more of the like? had not this refuſall of paſſing ſuch bills magnified his vertue and rendred him to poſterity in a different Character form what he now hath?

And by the experience of all times and the conſideration of human frailty this concluſion is manifeſtly deduced, that it is not poſſible to keepe men at all times (be they the houſes, or the King and his councell) but there will be ſometimes ſome deviation from the lawes, and therefore the conſtant and certain powers fixed by the ancient law muſt not be made voide, and the Kings Miniſters; the Laws do puniſh where the Law is tranſgreſſed, and they only ought to ſuffer for the ſame.

In this Parliament the houſes exhibited a bill to take away the ſuffrages of the Biſhops in the upper houſe of Parliament, and have ſithence agreed there ſhall be no more Biſhops at all, might not the King if he had ſo pleaſed have anſwered this bill with *Le Roy s'aviſera*, or *ne veult*: it was againſt *Magna Charta*; *Articuli Cleri* and many other acts of Parliament. And might have farther given theſe reaſons if it had ſo pleaſed him for the ſame: firſt that this Bill deſtroyes the writt whereby they are made two houſes of Parliament the King in the writt to the Lords being *Cum prælatis Colloquium habere*; ſecondly they have bene in all Parliaments ſince we had any, and voted, but in ſuch wherein they themſelves were concerned: And there have bene Biſhops here ſithence we were Chriſtians, and the fundamentall law of the kingdome approves of them: if any of them were conceived offenſive; they were left to juſtice, and his Majeſtie would put in in-offenſive men in their places: but ſithence his Majeſtie hath paſſed the Bill for taking away their votes in Parliament, it is a law that binds us ſo farr.

Upon the whole matter the law hath notably determined that Bills agreed by both houſes, pretended to be for the publique good, are to be judged by the King, for in all Kings reignes Bills have been preferred by both houſes, which allwayes are pretended to be for the publique good, and many times are not, and were rejected with *Roy s'aviſera* or *Roy ne veult*.

This Parliament begunne the third of *November* 1640 before that time in all the Kings reigne no armed power did force any of the people to do any thing againſt the law: what was done, was by his Judges, officers Referees and Miniſters from that time untill the tenth of *January* 1641 (when the King went from London to avoyd the danger of frequent tumults, being a yeare and three months, Privy Councellors and all his Juſtices and Miniſters.

miniſters were left to the Juſtice of the law, there wanted no time to puniſh punishable men.

The Sphære of the houſe of commons is to repreſent the grievances of the Contrey, to grant aydes for the King upon all fit occaſions extraordinary, to aſſent to the making or abrogating of lawes: The Orb of the houſe of Lords to Reforme eronious judgments given in the kings Bench, to redreſſe the delayes of Courts of Juſtice, to receive all petitions, to adviſe his Majeſtie with their councell, to have their votes in making or abrogating of Lawes, and to propoſe for the common good, what they conceive meete,

Lex non cogit ad impoſſibilia, ſubjects are not to expect from Kings impoſſible things, ſo many Judges, Councellors, Sheriffes, Juſtices of the peace, Commiſſioners, Miniſters of State, that the King ſhould over looke them all cannot be, it is impoſible.

The King is virtually in his ordinary Courts of Juſtice; ſo long as they continue his Courts: their charge is to adminiſter the lawes in being, and not to delay, deferre or ſell juſtice for any commandment of the King. Wee have Lawes enough *inſtrumenta boni ſæculi ſunt boni viri*, good miniſters, as judges and officers are many times wanting, the houſes propoſe new Lawes, or abrogation of the old; both induce novelty: the law for the reaſons aforeſaid, makes the King the only judge, who is aſſiſted therein by a great number of grave, learned and prudent men, as aforeſaid.

For the conſiderations aforeſaid the Kings party adhered to him, the law of the Land is their byrth-right, their guide, no offence is committed where that it is not violated: they found the commiſſion of Array warranted by the law; they found the King in this Parliament to have quitted the Ship money, Knighthood-money, ſeven Courts of Juſtice, conſented to a trienniall Parliament, ſetled

the Foreſt bounds, tooke away the Clerke of the Market of the houſhold, truſted the houſe with the Navie, paſſed an act not to diſſolve this Parliament without the houſes aſſent; no people in the world ſo free if they could have beene content with Lawes oathes and reaſon, and nothing more could or can be deviſed to ſecure us, neither hath beene in any time.

Notwithſtanding all this we found the King driven from London by frequent tumults, that two thirds and more of the Lords had diſſerted that houſe, for the ſame cauſe, and the greater part of the houſe of Commons left that houſe alſo for the ſame reaſon: new men choſen in their places, againſt law, by the pretended warrant of a counterfet Seale; & in the Kings name againſt his conſent, levying warre againſt him, and ſeizing his Ports, Forts, Magazines and Revenue, and converting them to his deſtruction and the ſubverſion of the law and land, laying taxes on the people never hard of before in this Land; deviſed new oathes to oppoſe forces rayſed by the King, not to adhære to him, but to them in this warre which they call the Negative Oath, and the Vow and Covenant.

By ſeverall wayes never uſed in this kingdome they have raiſed monies to foment this warre, and eſpecially to inrich ſome among them, namely firſt Exciſe, ſecondly Contributions, thirdly Sequeſtrations, fourthly Fift Parts, fiftly Twentieth Parts, ſixtly Meale-mony, ſeventhly Sale of Plundered goods, eightly Loanes, ninthly Benevolences, tenthly Collections upon their Faſt-dayes, eleventhly new Impoſitions upon Marchandizes, twelvethly Guards maintained upon the charge of private men, thirteenthly Fifty Subſidies at one time, fourtenthly Compoſitions with ſuch as they call delinquents, fiftenthly Sale of Biſhops lands &c.

From the Kings party meanes of aſſiſtance are taken; before

before any indictment their Lands ſeiſed, their goods taken, the law allows a Traytor or Fellon attainted, *Neceſſaria ſibi & familiæ ſuæ in victu & veſtitu* where is the covenant? where is the petition of right? where is the liberty of the ſubject?

1 *R.3.cap.3. Bract li. 3.c.8. Stanford. 192. Sir Ger. Fleetwoods* Caſe. 8. *pars Cook 7.H. 4. laſte leafe.*

Frſt We have ayded the King in this warre contrary to the negative oath and other votes, Our warrant is the twenty fifth of *Edward* the third, the ſecond Chapter, and the ſaid reſolutions of all the Judges.

Secondly Wee have maintained the Commiſſion of Array by the Kings Command, contrary to their votes: We are waranted by the ſtatute of the fifth of *Henry* the fourth and the judgment of Sir *Edward* Cooke, the Oracle of the Law as they call him.

Thirdly We maintained Arch-Biſhops and Biſhops whom they would ſuppreſſe. Our warrant is *Magna Charta* and many ſtatutes more.

Fourthly We have maintained the booke of common prayer, they ſuppreſſe it, Our warrant is five Acts of Parliament in *Edward* the ſixt and Queene *Elizabets* time 5. *Paſcha.* 35. *Elizabeth inter placita Coronæ in Banco Regis*. New booke of Entries fol. 252. *Penry* for publiſhing two ſcandalous Libels againſt the Church government, was indicted arraigned attainted and executed at Tyburne.

Fifthly We maintained the Militia of the kingdom to belong to the King, they the contrary, Our warrant is the ſtatute of the ſeventh of *Edward* the firſt and many ſtatutes ſithence, the practiſe of all times, and the cuſtome of the Realm.

Sixthly We maintained the counterfeiting of the great Seale to be high Treaſon, and ſo of the uſurpation of the Kings Forts, Ports, Shipping, Caſtles and his Revenue, and the Coyning of money, againſt them; Wee have our warrant by the ſaid ſtatute of the twenty fifth of *Edward* the

third, Chapter the ſecond and divers others ſince, and the practiſe of all times.

Sevenethly We maintayne that the King is the only ſupreme governer in all cauſes. They that his Majeſtie is to be governed by them, Our warrant is the ſtatutes of the firſt of Q. *Eliza.* Chapter the firſt, and the fifth of Q. *Elizabeth* Chapter the firſt.

Eighthly We maintayne that the King is King by an inhærent birth-right, by nature, by gods law, and by the law of the land, They ſay his Kingly right is an office upon truſt, Our warrant is the ſtatute of the firſt of king *James*, Chapter the firſt. And the reſolution of all the Judges of England in *Calvins* caſe.

9 *Ed.* 4. *fol.* 4.

Nynthly We maintain that the politique capacity is not to be ſevered from the natural. They hold the contrary: Our warrant is two ſtatutes (*viz.*) *Exilium Hugonis* in *Edward* the ſeconds time, and the firſt of *Edward* the third, Chapter the ſecond, and their Oracle who hath publiſhed it to poſterity, that it is damnable, deteſtable and execrable treaſon, *Calvins* Caſe *pars* 7. *fol.* 11.

Tenthly We maintaine that who aydes the King at home or abroade ought not to be moleſted or queſtioned for the ſame, They hold and practiſe the contrary. Our warrant is the ſtatute of the eleventh of *Henry* the ſeventh, Chapter the firſt.

Eleventhly We maintayne that the King hath power to diſaſſent to any Bill agreed by the two houſes; which they deny. Our warrant is the ſtatute of the ſecond of *Henry* the fift, and the practiſe of all times, the firſt of King *Charles*, Chapter the ſeventh, the firſt of King *James* Chapter the firſt.

Twefthly We maintayne that Parliaments ought to be holden in a grave and peaceable manner, without tumults

Coll. of Ord. *fol.* 31.

They allowed multitudes of the meaner ſort of people to come to Weſtminſter to cry for Juſtice when they could not

not have their will, and keepe guards of armed men to waite upon them. Our warrant is the ſtatute of the ſeventh of *Edward* the ſecond and their Oracle.

Thirteenthly We maintaine that there is no ſtate within this kingdome but the Kings Majeſty, and that to adhære to any other ſtate within this kingdome is high Treaſon. Our warrant is the ſtatute of the thrid of King *James* Chapter the fourth, and the twentie third of Q. *Eliza.* Chapter the firſt.

Fourteenthly We maintayne that to leavy a warre to remove Councellours, to alter Religion, or any Law eſtabliſhed, is high treaſon, They hold the contrary. Our warrant is, the reſolutions of all the Judges of England in Quene *Elizabeths* time, and their Oracle agrees with the ſame.

Fiftteenthly We maintaine that no men ſhould be impriſoned, put out of his lands, but by due courſe of Law, and that no man ought to be adjudged to death but by the law eſtabliſhed, the cuſtomes of the Realm, or by Act of Parliament; They practiſe the contrary in London, Briſtoll, Kent &c. Our warrant is *Magna Charta* Chapter the twenty ninth, the *Petition of right.* the third of King *Charles*, and divers lawes there mentioned.

We of the Kings party did and do deteſt Monopolies, and ſhip money, and all the grievances of the people as much as any men living, we do well know that our eſtates lives and fourtunes are preſerved by the lawes, and that the King is bound by his lawes, we love Parliaments If the Kings, Judges, counſell or miniſters have done a miſſe, they had from the third of *November* 1640 to the tenth of *January* 1641, time to puniſh them, being all left to Juſtice; Where is the Kings fault?

The Law ſaith the King can do no wrong, that he is *medicus regni*, *pater patriæ*, *ſponſus regni*, *qui per annulum* is eſpouſed to his Realme at his Coronation; the King is

11 pars. Cookes Reports. Magdalen Colledge Caſe

is Gods Lieutenant, and is not able to doe an unjuſt thing, Theſe are the words of the law.

One great matter is pretended that the people are not ſure to enjoy the acts paſſed this Parliament, A ſucceeding Parliament may repeale them ; The objection is very weake, a Parliament ſucceeding to that may repeale that repealing Parliament. That feare is endleſſe and remedileſſe, for it is the eſſence of Parliaments being compleate and as they ought to be, of head and all the members, to have power over Parliaments before; Parliaments are as the time are; if a turbulent faction prevailes; the Parliaments are wicked, as appeares by the examples recited before of extreame wicked Parliaments: if the times be ſober and modeſt, prudent and not byaſſed, The Parliaments are right, good and honorable, and they are good Medicines and ſalves, but in this Parliament *exceſſit medicina modum.*

In this cauſe and warre betweene the Kings Majeſty and the two houſes at Weſtminſter, what guide had the ſubjects of the land to direct them but the Lawes? What meanes could they uſe to diſcerne what to follow, what to avoide but the Lawes? The King declares it Treaſon to adhere to the Houſes in this warre : The Houſes declare it Treaſon to adhere to the King in this Warre. The Subjects for a great and conſiderable part of them (treaſon being ſuch a crime as forfets life and eſtate and alſo renders a mans poſterity baſe beggerly and infamons) looke upon the Lawes, and finde the lettr of the law requires them to aſſiſt the King, as before is manifeſted, was ever ſubject criminally puniſht in any age or nation for his purſuit of what the letter of the Law commands?

The Subjects of the kingdome finde the diſtinction and interpretation now put upon the Lawes of *Abſtractum & Concretum*, Power and Perſon, body politique, and natural

naturall, Perſonall preſence and virtuall, to have beene condemned by the law : And ſo the Kings party hath both the letter of the law and the interpretation of the letter cleared to their judgments, whereby they might evidently perceive what ſide to adhære to , what ſatisfaction could modeſt peaceable and loyall men more deſire ?

A verbo legis in criminibus & pœnis non eſt recedendum, hath beene an approved maxime of law in all ages and times. If the King be King and remain in his Kingly office (as they call it) then all the ſaid lawes are againſt them without colour : they ſay the ſaid lawes relate to him in his office, they cannot ſay otherwiſe, Commiſſions and pardon in the Kings name, and the perſon of the King and his body politique cannot, nor ought to be ſevered as hath beene before declared : And the members of both houſes have ſworn conſtantly in this Parliament that the King is the only ſupreme Governour in all cauſes over all perſons at this preſent time.

Coll of Ordinances 777.

5 *Eliz. cap.* 1.
1 *Eliz. cap.* 1.

For that of verball or perſonall commands of the King which is objected, We affirme few things to be ſubject thereto by the law : But his Majeſties Command under his great Seale, which in this warre hath beene uſed by the Kings command for his Commiſſion to leavy and array men , that is no perſonall command (which the law in ſome caſes diſallowes) but that is ſuch a command, ſo made, as all men hold their lands by, who hold by Patents; All corporations have their Chartera which hold by Charters, and all Judges and officers their places and callings.

It is objectd the King cannot ſuppreſſe his Courts of Juſtice , and that this warre tended to their ſuppreſſion.

Ob.

Sol.

The anſwer is the King cannot, nor ought to ſuppreſſe Juſtice or his Courts of Juſtice, nor ever did : But Courts of Jnſtice by *abuſer or non uſer* ceaſe to be courts of Juſtice; when Judges are made and proceedings in thoſe courts

7 *pars* The Earle of Weſtmerlands Caſe. 1 *Eliz.* *Dier* 165. 7 *pars Cooke.*

holden by others then Judges made by the King, and againſt his command under the great Seale, and his Majeſtie is not obeyed, but the votes of the houſes; they ceaſe to be the Kings Courts and are become the Courts of the houſes, and his Judges breaking that condition in law, of truſt and loyalty, implied in their Patents, are no longer his Judges; they obey and exerciſe their places by virtue of writts and proceſſes under a counterfet Seale. The King only can make Judges, the twenty ſeventh of *Henry* the eighth, Chapter the twenty fourth, *Juſtices of the Peace, &c.* twenty eighth of *Henry* the eighth *Dier* the eleventh, the Kings Patent makes Judges: The cheefe Juſtice of the Kings Bench is made by the Kings writt only of all the Judges.

The caſe of diſcontinuance of Proceſſe.

Articuli ſuper chartas cap. 5. The great Seale is the key of the kingdome, and meete it is that the King ſhould have the key of his kingdome about him; 2 *pars inſtit* 552. which confutes their ſaying that the King got the Seale away ſurreptitiouſly.

Britton fol. 23. The King, and he only, may remove his Courts from Weſtminſter into ſome other place, at Yorke the Termes were kept for ſeven yeares, in *Edward* the firſt's time: but for the Court of Common pleas, the place muſt be ceataine; for the Kings Bench and Chancery, the King by the law may command them to attend his perſon alwayes if it ſeeme ſo meete unto him: but the removing of the Common pleas muſt be to a place certaine, and ſo notified to the people.

34. *Aſſis. pl.* 24. 22 *Ed.* 4. *Fitz: juriſdiction laſt placit.* 6 *H.* 7. 9. 6 *Eliz. Dier* 226. All the bookes of law in all times agree, that the King may grant couuſance of all Pleas at his pleaſure within any County or precinct to bee holden there only, and remove the Courts from Weſtminſter to ſome other place (for the Common Pleas, the place muſt be certaine and ſo notified to the people) and adjourne the termes as hee ſees cauſe. All which the two houſes have violated. *Plebs ſine lege ruit.*

Some

Some ſeeming objections of Maſter *Prinn's*, ſcattered in divers books, anſwered and the truth thereby more fully cleared.

The firſt of *Henry* the fourth reviveth the ſtatute of the eleventh of *Richard* the ſecond, and repeales to the twelfth of *Richard* the ſecond, whereby certaine perſons were declared traytors to the King and kingdome, being of the Kings party. 1 *Ob.*

True, but note, the eleventh of *Richard* the ſecond, A Parliament beſet with 40000 men, and the King aſſents to it, ſo an Act, and beſides the firſt of *Henry* the fourth declares that the treaſons mentioned in the act of the eleventh of *Richard* the ſecond, being but againſt a few private men, ſhall not be drawn into example, and that no Treaſon ſhould be but ſuch as the twenty fift of *Edward* the third declares. All theſe are Acts paſſed by the King and the three eſtates, not to be drawne into example in a tumultuous time, by a beſieged Parliament, with an army, and the confirmer of *Henry* the fourth being an uſurper makes that act of the firſt of *Henry* the fourth to ſecure himſelfe. Alſo what is this to the votes of the two houſes only at this time. *Sol.* 9 *Ed.*4 *fol.* 80.

The Court of Parliament is above the King, for it may avoid his Charters Commiſions &c. granted againſt the law. 2 *Ob.*

And the Law is above the King. *Sol.*

By the ſame reaſon you may ſay that the Courts of Chancery, or any of the Courts of Law at weſtminſter are above the King, for they make of no effect the Kings Charters, which are paſſed againſt the law: and the King is Subject to law, and ſworne to maintaine it. Again it is no Parliament without the King, and the King is the head thereof, he is *principium Caput & finis* of a Parliament as *Medas tenendi Parliament.* hath it, and two houſes only, want *principium Caput & finis* of a Parliament

ament and it is a ſorry Parliament that wants all theſe. And therefore to ſay that Parliaments are above the King, is to ſay that the King is above himſelfe.

3 Ob. The Parliament can enlarge the Kings prerogative, therefore it is above him.

Sol. If the King aſſent otherwiſe not, and then it is an act of Parliament and otherwiſe no Act.

4 Ob. *Bracton* ſaith God, the Law, and the Kings Court (*viz*) his Earles and Barrons are above the King. (*viz*) in Parliament, as Maſter *Prinne* expounds it,

Sol. Where is then the houſe of Commons? Indeed take God, the Law, and Earles and Barrons together it is true, but to affirme that the Earles and Barrons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferior member is above the head, is hard to conceive; beſides that poſition deſtroyes all Maſter *Prinns* diſcourſe, who attributes ſo much to the houſe of Commons.

5 Ob. The King is but one of the three eſtates of Parliament, and two are greater then one; therefore above,

Sol. The Leggs Armes and trunke of the Body are greater then the head and yet not above: nor with life without it; The argument holds for quantity but not for quality, and in truth the King is none of the three eſtates, but above them all, the three eſtates are the Lords Spirituall, the Lords Temporall, and the Commons; *Cooke* their Oracle in his Chapter of Parliaments, Folio the firſt.

6 Ob. In corporations the greater number of voices make all the Acts of the corporation valid; therefore ſo in Parliament,

Sol. By this reaſon the Kings aſſent is needleſſe and to no end, and all the Acts of Parliament formerly mentioned, and law bookes have quite miſtaken the matter which with unanimous voice requires the Kings aſſent as neceſſary

ſſary. Beſides the Corporations are ſo conſtituted by the Kings Charters, that the greater number of votes ſhall make their Acts valid.

The King, as King, is preſent in his Parliament as well as in all other his Courts of Juſtice, how be it he is not there, 7 *Ob.*

In his other Courts of Juſtice he hath no voice, he is none of the Judges, in the Parliament he hath, if his preſence be not neceſſary his voice is not, nor his aſſent. *Sol.*

The originall prime legiſlative power of making Lawes to bind the ſubjects and their poſterity, reſts not in the King, but in the kingdome and Parliament which repreſents it. 8 *Ob.* Soveraign power of Parliaments. 46. 47.

Maſter *Prinne* in the ſame leafe affirmes, and truly, that the Kings aſſent is generally requiſite to paſſe lawes and ratifie them, the King is the head of the kingdome and Parliament, how then can a body act without a head? *Sol.*

A major part of a Corporation binds, therefore the Major part in Parliament, and ſo of by-Lawes. 9 *Ob.*

The Corporation is ſo bound, either by the Kings Charters, or by preſcription, which ſometimes had the Kings conceſſion: but preſcription, and Law, and practiſe, alwayes left the King a negative voice. *Sol.*

The King cannot alter the Bills preſented to him by both houſes g°. 10 *Ob.*

True but the King may refuſe them, *Sol.*

Acts of Parliament and Lawes miniſtred in the Reignes of uſurpers bind rightfull Kings. g°. 11 *Ob.*

What is this to prove the two houſes power only, which is the queſtion, A King *de facto* muſt be obeyed by them who ſubmitted to him, and they are his Subjects by their ſubmiſſion, and not Subjects *de facto* to the true King, and ſuch being Traytors and Rebells to the regent King (having renounced the true King) when the *Sol.* 9 *Ed.* 4. 12.

lawfull Kings is reſtored, may be puniſhed by him for their treaſon againſt the uſurper. But heere is a King ſtill in both caſes, and the proceedings at law holds; The Judges having their patents from the being Kings, in the reignes of Kings, *de facto* or *dejure*, for all Kings are bound and ſworne to obſerve the lawes.

12 *Ob.* A King dies without Heyre, is an infant, *non Compos mentis &c.* the two honſes may eſtabliſh Lawes. g°

Sol: There is no *Inter-regnum* in England, as appeares by all our books of law, and therfore the dying without Heyre is a Vaine ſuppoſition, and by their principle he is conſiderable in his politique capacity, which cannot die at all : The protector aſſiſted by the Councell of the King at law, his twelve Judges, the councell of ſtate, his Attorney, Solicitor and two Sergieants at law, his twelve Maſters of the Chancery, hath in the Kings behalfe and ever had, a negative Voice; but what is this to the preſent queſtion; Wee have a King of full age, of great wiſdome and judgement, The power of the two houſes in ſuch a caſe to be over the King cannot be ſhowne.

13 *Ob.* The King cannot diſaſſent to publique and neceſſary Bills for the common good. g°

Sol. Nor ever did good King, but who ſhall be judge whether they be publique and neceſſary? The major part in either of the houſes for paſſing of bills ſo pretended may be but one or two voices or very few; and perhaps of no judicious men, is it not then fitter or more agreeable to reaſon; that his Majeſtie, and Councell of State, his twelve Judges, his Sergieants, Attorny and Solicitor, twelve Maſters of the Chancery ſhould judge of the conveniency and benefit of ſuch Bills for the publique good, rather then a minor (of which ſort there may be in the houſes) or a weake man, or a few, who often times carry it by making the Major part, which involves the conſent of all? Let reaſon determine.

The

The Kings of England have beene elective; and the King by his Coronation Oath is bound to maintaine *juſtas leges & conſuetudines quas vulgus elegerit.* g° 14 *Ob.*

Popery hath beene in the kingdome and therefore to continue it ſtill will not be taken for a good argument, when things are ſetled for many ages; to looke back to times of confuſion, is to deſtroy all repoſe: The Act of Parliament of the firſt of K. *James.* Chapter the firſt and all our extant lawes ſay, that the Kings office is an heritage inhærent in the blood of Our Kings and their byrth-right. *Sol.*

And uſurpers that come in by the conſent of the people, are Kings *de facto* but not *de jure* as appeares by the acts of Parliament declaring them ſo. And by all our law books and the fundamentall conſtitution of the Land, Regall power is herditary and not elective. 1 *Ed.* 4. *cap.* 1.

For the words (*vulgus elegerit*) if *vulgus* be applied to the houſe of commons, they of themſelves can make no laws? The Peeres were never yet termed *vulgus*, but allowing they be ſo called, the lawes to be made muſt be juſt and who is fit to judge thereof is before made evident. 1 *H.* 7.

Cuſtomes cannot referre to future time, and both are coupled, Lawes and Cuſtomes. 15 *Ob:*

Princes have beene depoſed, and may bee by the two houſes. g°

The depoſers were Traytors as appeares by the reſolution of all the judges of England; *Cooke* Chapter: Treaſon in the ſecond part of the Inſtitutes. And never was King depoſed but in tumultuous and mad times, and by the power of Armies, and they who were to be the ſucceeding Kings, in the head of them, as *Edward* the third and *Henry* the fourth. *Sol.*

The appeale to the Parliament for errors in judgements in all Courts, is frequent. g° 16 *Ob.*

This is only to the houſe of Lords, and that is not the Paliament *Sol.*

Parliament: the houſe of Commons have nothing to doe therewith and in the houſe of Peeres, if a writt of error be brought to reverſe any judgment. There is firſt a Petition to the King for the allowance thereof, and the reaſon of the Law in this Caſe is for that the Judges of the Land all of them, the Kings Councell, and twelve Maſters of the Chancery aſſiſt there, by whoſe advice erroneous judgments are redreſſed.

17 *Ob.* The Parliaments have determined of the rights of Kings, as in *Henry* the ſixts time, and others, and Parliaments have bound the ſucceſſion of Kings, as appeares by the ſtatute of the thirteenth of Q. *Eliza*, Chapter the firſt and the diſcent of the Crowne is guided rather by a Parliamentary Title then by common law. g°

Sol. If this objection be true, that the Title to the Crowne is by Parliament then wee had no uſurpers, for they all had Parliaments to back them, yea *Richard* the third, that Monſter, All our books of law ſay they have the Crowne by diſcent, and the Statutes of the Land declare, that they have the ſame by inherent byrth-right. And the Statute of the thirteenth of *Elizabeth*, the firſt Chapter, was made to ſecure Queene *Elizabeth*, againſt the Queene of *Scots*, then in the Kingdome, clayming the Crowne of England, and having many adherents. And that Statute to that end affirmes no ſuch power in the two Houſes (which is the Queſtion) but in Queene *Elizabeth*, and the two Houſes, which makes againſt the pretence of this time.

Maſter *Prinne*, *fol.* 104. of his booke intituled the Parliaments ſupreme Power, &c. Objecting the Statute of the firſt of Queene *Elizabeth*, and his owne Oath, That the King is the only ſupreame Governour of this Realme. Anſweres; The Parliament is the ſupreme Power, and the King ſupreame Governour. And yet there hee allowes him a Negative Voice, And *fol.* 107. confeſſeth that Acts

of

of Parliament, tranſlated the Crowne from the right heires at Common-lawe to others who had no good Title; Then the Parliamentary Title makes not the King, ſo powerfull is Truth, that it eſcapes from a man unawares: To make a diſtinction betweene Supreame Governour, and Supream Power, is very ſtrange, For who can Governe without Power?

The King aſſembles the Parliament by his Writt, Adjournes, Prorogues and Diſſolves the Parliament, by the Lawe at his pleaſure, as is evident by conſtant practiſe, the Houſe of Commons never ſate after an adjournment of the Parliament by the Kings command. Where is the Supreame Power? *Vide* Speede 645. 4 *pars Inſtit.* 27. & 28.

The King, by his Oath, is bound to deny no man Right, much leſſe his Parliament, To agree to all juſt and neceſſary Lawes propoſed by them to the King. This is the ſubſtance of the diſcourſe againſt the Kings Negative Voice. 18 *Ob.*

The King is ſo bound as is ſet downe in the Objection, but who ſhall judge whether the Bill propoſed bee juſt and neceſſary: For all that they doe propoſe are ſo pretended and carried in eyther Houſe, ſometimes by one or two voices; or ſome few as aforeſaid, and certainly as hath beene ſhewn, the King, his Councell of State, his Judges, Sargeants, Attorney, Sollicitor, and twelve Maſters of the Chancery can better Judge of them, then two or three or few more. *Sol.*

Maſter *Prinne fol.* 45. In his booke of the Parliaments intereſt to nominate Privy-Councellors, &c. calleth the opinion of the *Spencers* to divide the perſon of the King from his Crowne, a ſtrange opinion, and cites *Calvins* Caſe, but leaves out the concluſions therein mentioned, *fol.* 11. Maſter *Prinne* ſaith there, But let this opinion be what it will: without the Kings Grace and Pardon it will goe very far, and two Acts of Parliament there mentioned *Calvins* Caſe 7 *pars fol.* 11.

are beyond an opinion. And in his booke of the opening of the Great Seale *fol.* 17. The Parliament hath no jurisdiction to use the Great-Seale for Pardons Generall or Particular. Where is the Supreme power?

Master *Prinnes* (opening of the Seale) *Page* 19. saith, The Noblemen and State, the day after the funerall of King *Henry* the third (king *Edward* the first his sonne being in the holy Land) made a new Great-Seale, and Keepers of the same: And in *Henry* the sixts time, in the first yeere of his Reigne, the like was done in Parliament.

19 Ob.

A facto, ad jus, is no good Argument, for that in *Edward* the firsts time, it was no Parliament, for King *Henry* the third was dead, which dissolved the Parliament, if called in his time, and it could bee no Parliament of *Edward* the firsts time, for no writ issued to summon a Parliament in his name, nor could issues but under that new Seale, it was so sodainly done after *Henry* the thirds death, King *Edward* the first being then in the holy-Land, it was the first yeere of his Reigne, and no Parliament was held that yeere, nor the second yeere of his Reigne, The first Parliament that was in his Reigne, was in the third yeere of his Reigne, as appeares by the Printed Acts. Also the making of that Seale was by some Lords then present, What hand had the Commons in it? Concerning the Seale made in *Henry* the sixts time, the Protector was vice-Roy according to the course of Lawe, and so the making of that Seale was by the Protector in the Kings name; and that Protector *Humphry* Duke of Glouceſter, as Protector, in the Kings name, summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of *Henry* the sixt, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament. *Prinne ibid. fol.* 19. But the new Counterfeit Seale was made

Sol.

made when the King was at Oxford, in his owne kingdom and not in the holy-Land.

Maſter *Prinne* in his Booke of the two Houſes power to impoſe Taxes, reſtrayne Malignants againſt any *Habeas Corpus*, &c. ſaith that the Parliament is above *Magna Charta*, and *folio* 15 *ibid.* The Parliament hath power over *Magna Charta* to repeale the ſame when there is Cauſe. 20 *Ob.*

This Argument ſuppoſeth that they have the Kings power, which hath appeared formerly they have not. But ſuppoſe they had, *Magna Charta* contaynes many morall Lawes, which by the Lawe of the Land a Parliament cannot alter, 21. *H.* 7. 2. *Dr. & Student*, 2. *Dialogue.* For example, it ſaith *cap.* 18. Juſtice ſhall not be ſold, dlayed nor denyed to any man, but by this Argument the Parliament may make Lawe to delay, deny, and to ſell Juſtice, which ſurely is a very ill poſition to maintaine. *Sol.*

What they would have doth now by the Propoſitions ſent to Newcaſtle to his Majeſtie appeare, whereby they would have him diveſt himſelfe and ſettle in them all his kingly power by Sea and Land, and of themſelves to have power, without him, to lay upon the people of this Land, what Taxes they thinke meete, to aboliſh the Common-prayer booke, to aboliſh Epiſcopacy, and to introduce a Church government not yet agreed, but ſuch as they ſhall agree on.

His Majeſty finding a prevayling party in both Houſes to ſteere this courſe, and being chaſed away with Tumults from London, leaves the Houſes for theſe reaſons.

(*viz.*)

FIRST, Becauſe to alter the Government for Religion, is againſt the Kings Oath.

Secondly, Againſt their Oathes: For every of them hath ſworne in this Parliament, That his Majeſty is the only ſupreame Governour in all Cauſes Eccleſiaſticall and over all Perſons.

Thirdly, This courſe is againſt *Magna Charta*, the firſt Chapter and the laſt. *Salvæ ſuis Epiſcopis omnes libertates ſuæ*, Confirmed by thirty two Acts of Parliament, And in the two and fortieth of *Edward* the third, in the firſt Chapter enacts, If any Statute bee made to the contrary it ſhall be holden for none, and ſo it is for Judgements at Lawe, in the twenty fift of *Edward* the firſt, chapter the firſt and the ſecond, The great *Charter* is declared to be the Common-lawe of the Land.

Fourthly, They indeavour to take away by their Propoſitions, the Governement of Biſhoppes, which is as ancient as Chriſtianity in this Land, and the booke of Common-Prayer, ſetled by five Acts of Parliament, and compiled by the Reformers and Martyres, and practiſed in the time of foure Princes.

Fiftly, Theſe Propoſitions taking away from his Majeſty all his power by Land and Sea, Rob him of that which all his Anceſtours Kings of this Realme have enjoyed. That Enjoyment and Uſage makes the Lawe, and a Right, by the ſame to his Majeſty. They are againſt their owne Proteſtation made this Parliament (*viz.*) to maintaine his royall Perſon, Honour and Eſtate; They are againſt their Covenant, which doth ſay that they will not diminiſh his juſt Power and Greatneſſe.

For theſe Reaſons his Majeſty hath left them, and as is beleeved will refuſe to agree to the ſaid Propoſitions, as by the Fundamentall Lawe of the Land hee may (having a Negative Voyce) to any Bills propoſed.

The

The reſult of all is, upon the whole matter. That the king thus leaving of the Houſes, and his deniall to paſſe the ſaid Propoſitions, are ſo farre from making him a Tyrant, or not in a condition to Governe, at the preſent; That thereby he is rendred a Juſt, Magnanimous and Pious Prince, ſo that by this it appeares cleerely to whom the Miſeries of theſe Times are to bee imputed. The remedy for all is, an Act of Oblivion and a Generall Pardon. GOD

ſave the *KING.*

28°. *Aprilis* 1647.

David Jenkins.

Now priſoner in

the Tower.